

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6118 of 1984

with

SPECIAL CIVIL APPLICATION No 656 of 1985

Date of decision: 23-9-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT BANK WORKERS UNION

Versus

CHAIRMAN, CAMBAY HINDU

MERCHANTS CO OP BANK LTD

Appearance:

1. Special Civil Application No. 6118 of 1984
MR TR MISHRA for Petitioners
MR HK RATHOD for Respondent No. 1

2. Special Civil Application No 656 of 1985

MR HK RATHOD for Petitioners

MR GIRISH PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/09/97

ORAL JUDGEMENT

Heard the learned counsel for the parties. Both these special civil applications are arising from the award of the Industrial Court, Gujarat State, Ahmedabad, passed in Appeal (IC) No.101 of 1982, and as such the same are being taken up for hearing together and are being disposed of by this common judgment.

2. Under the impugned order the Industrial Court allowed the appeal of the workman, setting aside the order of the Labour Court dated 30th January, 1982, and the employer was directed to pay the workman 50% backwages for the period from 25th July, 1975 to 23rd October, 1982 within three months from the date of receipt of the order. So both the parties - the employer and the employee- felt aggrieved by the said order. The employer has challenged the order of the appellate court whereas the workman prayed for reinstatement with full backwages.

3. The services of the workman were terminated by the employer for the misconduct committed by him. There is long list of misconduct numbering 14 alleged to be committed by the workman. The Industrial Court found that it is a case of termination of services of the workman for the misconduct committed by him, but the misconduct was not accepted of serious nature which would have warranted punishment of termination of his services. After going through the order of the Industrial Court in the appeal filed by the workman I do not find any illegality therein. The Industrial Court though has passed very reasonable order but in my view it has taken a lenient view. For the misconduct which is found proved to have been committed by the workman no punishment has been awarded to him. Otherwise the respondent workman could have been given alternate penalty. It is a case where punishment given to the workman for proved misconduct was held to be excessive. In such matter it is obligatory on the part of the Labour Court or

Industrial Tribunal either to impose alternative penalty itself or send the matter back to the employer for substitution of alternative penalty for penalty of termination of services. In fact for misconduct found proved the Industrial Tribunal has not given any punishment to the workman. 50% backwages has been awarded to the workman for the reason that he was found in gainful employment. So it is not the case also where 50% backwages of the workman were withheld by way of penalty. So full relief in fact has been given to the workman.

4. Other contention which is required to be considered is what should be the age of superannuation in the case of the workman. The workman stated that the retirement age should have been taken as 58 years, whereas the counsel for the management contended that it has been taken as 55 years. The workman attained the age of 55 years on 23rd October, 1982. The claim of the workman for 58 years is based on the ground that the Standing Orders were modified and the age of retirement has been raised to 58 years. However, it is not in dispute that these standing orders were challenged before the appellate authority. The appellate authority has maintained the order of the lower authority. So far as the demand of the workman for age of retirement as 58 years is concerned, he could not make out any case how the Standing Order can be taken to be amended from the date of passing of order by the Labour Court.

5. So far as the special civil application of the employer is concerned, I do not find any merits therein. Out of 14 charges only one charge has been found proved and that was not that much serious which justifies penalty of termination of the services of the workman. So far as the special civil application of the workman is concerned, as stated earlier he failed to make out any case for interference of this court.

6. In the result both these special civil applications fail and the same are dismissed. Rule discharged in both the petitions. Interim relief, if any, granted earlier stands vacated. No order as to costs.

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